

DRAFT DSM FINANCING STRUCTURE

30 V.S.A. § 209b. Qualified DSM Financing orders

(a) Definitions. As used in this section:

(1) "Electric utility" means any entity engaged in the distribution of electricity directly to the consumers within the state of Vermont.

(2) "Issuer" means any entity approved in a qualified DSM financing charge order to issue DSM financing bonds; "issuer" may include, but is not limited to, the EEU or other entity appointed by the Board pursuant to 30 V.S.A. § 209(d)(2).

(3) "DSM financing bond" means a note, bond, debenture or any other evidence of indebtedness or certificate evidencing an interest in any evidence of indebtedness authorized by a qualified DSM financing charge order.

(4) "DSM financing charge" means any volumetric charge imposed by the board pursuant to a qualified DSM financing charge order. Such DSM financing charge may be expressed as an adder to the energy efficiency charge established by the board pursuant to 30 V.S.A. § 209(d)(3).

(5) "Demand Side Management" or "DSM" means an energy efficiency or conservation program or measure, including activities to encourage appropriate combined heat and power systems, as may be approved by the board pursuant to 30 V.S.A. § 209(d).

(6) "DSM financing charge order" means an order of the board that complies with the requirements of this section.

(7) "Energy Efficiency Utility" or "EEU" means an entity or entities appointed by the board to provide for the development, implementation and monitoring of gas and electric energy efficiency and conservation programs and measures including appropriate combined heat and power systems, as described in 30 V.S.A. § 209(d)(2).

(8) "Savings" means the total benefit to electric or gas ratepayers resulting from a qualified DSM financing charge order, including specifically those benefits resulting from the implementation of additional conservation, efficiency or combined heat and power systems and benefits attributable to the availability of a qualified DSM financing charge order to pay for those programs or measures, offset by the costs incurred to obtain the qualified DSM financing charge order and related DSM services.

(b) General. Upon an application submitted by the department of public service, the EEU or a Vermont utility, and subject to the terms and conditions of this section, the board may issue one or more qualified DSM financing charge orders.

A qualified DSM financing charge order shall impose DSM financing charges payable to the issuer of DSM financing bonds in order to finance the costs associated with development, implementation and monitoring of one or more energy efficiency, conservation or combined heat and power program as authorized by the Board pursuant to 30 V.S.A. § 209(d).

(c) Qualified DSM financing charge order provisions. A qualified DSM financing order shall contain, at a minimum, all of the following:

(1) a finding that a qualified DSM financing charge order will promote the general good within the state of Vermont;

(2) a uniform DSM financing charge imposed for the benefit of the issuer on the consumption of such electricity or gas within the state of Vermont by such customers as determined by the board and specified in the order;

(3) a specific mechanism for automatic adjustment of the DSM financing charge, at least annually, in accordance with electricity and gas consumption forecasts prepared by the EEU or other entity approved by the board, so that the financing charge is imposed at all levels designed to provide revenues sufficient to make timely payments of accrued interest and scheduled principal on all DSM financing bonds, as well as ongoing administrative expenses, credit enhancement fees and scheduled overcollateralization amounts with respect to such financing bonds;

(4) the covenant and pledge of the state of Vermont set forth in subsection (h) of this section.

(d) Approval by the board. The board may approve a qualified DSM financing charge order for energy efficiency, conservation or combined heat and power programs upon finding that such an order will promote the general good within the state of Vermont. To determine that such an order will promote the general good, the board shall find that significant, quantifiable savings are substantially likely to result from the implementation of the energy efficiency, conservation or combined heat and power programs to be financed.

(e) Additional factors. The board shall also give consideration to the following factors:

(1) the feasibility of any prospective alternative methods of achieving ratepayer savings;

(2) any impact of the transaction on existing or prospective opportunities for electric or gas consumers to exercise retail choice;

(3) the impact of the transaction on the development of new renewable energy resources;

(4) the specific regulatory and accounting treatment that will be required of the EEU, the issuer and the electric or gas utilities; and

(5) such other related factors as the board deems appropriate.

(f) Collections and remittances. DSM financing charges and the right to receive financing charges shall be property of the issuer. The right to receive DSM financing charges shall constitute a present interest in property. If requested by the issuer or any successor that is entitled to receive DSM financing charges, financing charges shall be collected by each electric and gas utility in accordance with the requirement of an applicable qualified DSM financing charge order for the benefit of the issuer or the issuer's transferee. Financing charges collected by an electric or gas utility shall be remitted by such electric or gas utility to the issuer or its designee within one month after receipt thereof by such electric or gas utility, or such shorter period as shall be designated by the board. Upon 30 days' written notice to an electric or gas utility, the issuer or any successor entitled to receive financing charges at any time and for any reason may direct that the electric or gas utility shall cease to collect financing charges. Any electric or gas utility in possession of financing charges shall have no right, title or interest in such collections, but rather shall hold such collections in trust for the benefit of the issuer.

(g) Nonbypassable. DSM financing charges shall be separately stated on consumers' retail electric and gas bills or included as an adder to the EEC, and shall be payable regardless of any change in structure or identity of the electric or gas utility, and regardless of any change in ownership or operation of any electric generation, transmission or distribution facilities. If a consumer pays only part of its electric or gas bill for any period, a pro rata portion of the payment may be applied to payment of the DSM financing charge for the period.

(h) State pledge. The state of Vermont covenants and pledges for the benefit of the issuer, any assignee of the issuer, and the owners of DSM financing bonds that neither the DSM financing charge nor the automatic adjustment mechanism set forth in subsection (e) of this section shall be altered, revoked, amended, postponed, impaired, limited or terminated by the state of Vermont, by the board or by any other agency or instrumentality of the state, absent adequate provision for the protection of the issuer, any designee of the issuer, and the owners of the financing bonds. The board, as agent of the state of Vermont, is authorized and directed to deliver written confirmation of this covenant and pledge in connection with the issuance of all financing bonds.

(i) Bankruptcy. A qualified DSM financing charge order shall remain in full force and effect, notwithstanding any bankruptcy, reorganization or other insolvency proceeding with respect to:

- (1) any electric or gas utility or successor or assign of any electric utility; or
- (2) the EEU or any successor or assign of the EEU; or
- (3) any entity appointed by the Board to provide energy efficiency, conservation or combined heat and power programs or services pursuant to 30 V.S.A. § 209(d)(2).

(j) Assignment of DSM financing charge revenues. The issuer may grant a security interest in, or otherwise assign DSM financing charges and the right to receive financing charges

in connection with, the issuance of DSM financing bonds. Such grant or assignment shall be valid and enforceable without delivery or filing.

(k) Hearing procedure. A qualified DSM financing charge order shall be issued only upon hearing, following due notice to all electric and gas utilities, the department, the EEU and any entity appointed by the Board to provide energy efficiency, conservation or combined heat and power programs or services pursuant to 30 V.S.A. § 209(d)(2).

(l) Report to legislature. Upon approval of a DSM financing order, the board shall submit a report to the legislature containing the order and detailed information on the findings of the board including the risks, savings and costs likely to result from the energy efficiency, conservation and combined heat and power programs or services to be financed under the order.

Title 10: Conservation and Development

Chapter 11B: VERMONT DEMAND SIDE MANAGEMENT FINANCING AUTHORITY

10 V.S.A. § 171. Legislative findings

(a) The legislature finds it is necessary and strongly in the public interest to assist in the financing of Demand Side Management or “DSM” programs and measures as defined in subdivision 209b(a)(5) of Title 30.

(b) The legislature further finds the availability of a mechanism to facilitate such DSM financing will promote the prosperity and general welfare of all citizens, and that this chapter is necessary and desirable in order to accomplish these purposes.

(c) The legislature further finds the lowest cost capital will be made available to the extent financing can be accomplished through:

- (1) an entity that is bankruptcy-remote from other parties; and
- (2) the issuance of bonds, the interest on which is excluded from federal gross income.

(d) Therefore, the general public advantage requires low-cost capital be made available to finance such arrangements, that the provision of such capital is best accomplished through creation of a state authority uniquely suited to that purpose, and that maximum feasible use of the personnel and experience of the Vermont economic development authority in this context will best serve the public interest.

10 V.S.A. § 172. Definitions

As used in this chapter:

(1) "Authority" means the Vermont demand side management financing authority established under section 173 of this title.

(2) "Debt service" means the amounts required to pay DSM financing bonds according to their terms, and shall include amounts representing principal, premium and interest, including interest on overdue payments.

(3) "Eligible charges" means qualified DSM financing charges imposed pursuant to section 209b of Title 30.

(4) "Financing document" means a written instrument establishing the rights and responsibilities of the authority with respect to a program or measure financed by the issue of DSM financing bonds. A financing document may be in the nature of a pledge, an installment sale, a secured or unsecured loan or other similar transaction, may bear any appropriate title and may involve property in addition to the DSM financing charges created pursuant to section 209b of Title 30. The authority's interest in eligible charges under a financing document may be that of owner, conditional or installment vendor, pledgor, pledgee or otherwise.

(5) "Maturity date" means the date upon which a DSM financing bond secured directly or indirectly by a pledge of eligible charges would be extinguished if paid in accordance with the terms of the DSM financing bond.

(6) "Demand Side Management" or "DSM" means an energy efficiency or conservation program or measure, including activities to encourage appropriate combined heat and power systems, as may be approved by the board pursuant to 30 V.S.A. § 209(d).

(7) "DSM Financing bond" has the meaning set forth in subdivision 209b(a)(3) of Title 30.

(8) "Qualified DSM financing charge order" has the meaning set forth in subdivision 209b(a)(6) of Title 30.

(9) "Energy Efficiency Utility" or "EEU" means an entity or entities appointed by the board to provide for the development, implementation and monitoring of gas and electric energy efficiency and conservation programs and measures including appropriate combined heat and power systems, as described in 30 V.S.A. § 209(d)(2).

(10) "Security document" means a written instrument establishing the rights and responsibilities of the authority and the holders of DSM financing bonds issued to finance eligible energy efficiency, conservation and combined heat and power programs and measures, and may provide for a trustee for the benefit of the holders of these DSM financing bonds. A security document may contain an assignment, grant of a security interest, pledge or other encumbrance of all or part of the authority's interest in, or right to receive payments with respect

to, eligible charges under a financing document, and may bear any appropriate title. A financing document and a security document may be combined as one instrument.

10 V.S.A. § 173. Authority; organization

(a) The Vermont demand side management financing authority is hereby created and established as a body corporate and politic and a public instrumentality of the state. The exercise by the authority of the powers conferred upon it in this chapter constitutes the performance of essential governmental functions.

(b) The authority shall have 13 voting members, who shall be the voting members of the Vermont economic development authority, plus one additional individual appointed by the governor. They shall be compensated at the rate of \$50.00 a day for time spent in the performance of their duties, and they shall be reimbursed for necessary expenses incurred in the performance of their duties. The manager of the Vermont economic development authority shall also serve as the manager of this authority, and the Vermont economic development authority shall also have the authority to contract with this authority for the provision of management and staffing needs.

(c) The authority shall select a chair, vice chair, and treasurer from among its members.

(d) Any net earnings of the authority, beyond that necessary for retirement of the indebtedness, may be applied toward the reduction of any customer charge assessed under any qualified DSM financing charge order.

(e) Upon dissolution of the authority, title to all property owned by the authority shall vest in the state of Vermont.

(f) The authority shall not avail itself of federal bankruptcy law.

10 V.S.A. § 174. Authority; general powers

The authority is hereby authorized:

(1) Pursuant to the specific directives and terms of any qualified DSM financing charge order issued by the public service board pursuant to section 209b of Title 30, to borrow money, make and issue negotiable bonds, notes, commercial paper; and give other evidences of indebtedness or obligations, including, without limitation, DSM financing bonds pursuant to subchapter 2 of this chapter, and give security therefor. Such evidences of indebtedness or obligations may be incurred for any of the authority's corporate purposes. Such evidences of indebtedness or obligations shall be in such form and denominations, and with such terms and provisions, including the maturity date or dates, redemption provisions and other provisions necessary or desirable. Such evidences of indebtedness or obligations shall be either taxable or tax-exempt, and shall be noninterest bearing, or bear interest at such rate or rates, which may be fixed or

variable, as may be sufficient or necessary to effect the issuance and sale or resale thereof. The authority is authorized to enter into such agreements with other persons as the authority deems necessary or appropriate in connection with the issuance, sale, and resale of such evidences of indebtedness or obligations, including, without limitation, trust indentures, bond purchase agreements, disclosure agreements, remarketing agreements, agreements providing liquidity or credit facilities, bond insurance, or other credit enhancements in connection with such evidences of indebtedness or obligations. The authority is authorized to resell or retire any such evidences of indebtedness or obligations prior to the stated maturity thereof. No indebtedness shall be issued by the authority without the written approval of the state treasurer, which approval shall be given if, based upon his or her investigation, the state treasurer has certified that:

(A) none of the nationally-recognized credit rating agencies that rate general obligation debt of the state of Vermont has concluded that such indebtedness will be included in the state of Vermont's debt statement, as prepared by such rating agencies; or

(B) the financing structure and flow of funds for such indebtedness will not result in such indebtedness being counted as net tax supported debt, or its equivalent, on the state of Vermont's debt statement, as prepared by any of the nationally-recognized credit rating agencies that rate general obligation debt of the state of Vermont.

(2) To acquire, hold and dispose of real and personal property; to enter into all contracts, leases, agreements and arrangements and to do all lawful acts and things necessary or incidental to the performance of its duties and the execution of its powers under this chapter, and in accordance with a qualified DSM financing charge order issued by the public service board.

(3) To collect and receive eligible charges to assist in meeting the expenses of the authority incurred under this chapter.

(4) To sue and be sued in its own name and plead and be impleaded; service of process upon the authority in any action shall be made by service upon the secretary of state, either by hand or by leaving a copy of the process at the office of the secretary.

10 V.S.A. § 175. Records; annual report; audit

(a) The authority shall keep an accurate account of all its activities and of all its receipts and expenditures.

(b) Each year, prior to February 1, the authority shall submit a report of its activities for the preceding fiscal year to the governor and to the general assembly. The report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by a certified public accountant. The cost of the audit shall be considered an expense of the authority, and a copy of the audit shall be filed with the state treasurer.

(c) The auditor of accounts of the state and authorized representatives of the auditor may, at any time, examine the accounts and books of the authority.

10 V.S.A. § 176. Financing documents

(a) A financing document shall provide for:

(1) payments or deposits at such times and in such amounts as are necessary in order to pay the scheduled debt service as it becomes due on all mitigation bonds issued by the authority; and

(2) the payment of all the costs and expenses of operating and administering the mitigation bond program.

(b) A financing document may:

(1) Provide for payments or deposits by the authority which include amounts in addition to the amounts required to pay scheduled debt service and other amounts required pursuant to security documents;

(2) Pursuant to subsection 209b(h) of Title 30, provide that some or all of the obligations of the authority and of the state of Vermont shall be unconditional, and shall be binding and enforceable in all circumstances whatsoever, notwithstanding any other provision of law; and

(3) Contain such other provisions and covenants relating to the eligible charges as the authority deems necessary or desirable for the protection of the authority and of the state of Vermont or others.

10 V.S.A. § 177. Security documents

(a) An assignment, pledge or other encumbrance of all or part of the authority's right to receive payments with respect to eligible charges contained in a security document shall be fully effective from the time when the security document is executed with or without any subsequent physical delivery or segregation of the money, and without any filing or recording under the Uniform Commercial Code or otherwise, and the Uniform Commercial Code shall not apply to such assignment, pledge or other encumbrances.

(b) A security document may contain covenants of the authority as to:

(1) the creation and maintenance of reserves;

(2) the issuance of other mitigation bonds with respect to eligible charges;

(3) the custody, investment and application of monies;

(4) the use of surplus mitigation bond proceeds to redeem mitigation bonds or to reduce charges to customers under any qualified cost mitigation charge order;

(5) action by the authority in the event of a default in connection with the assessment, collection, processing, administration or remittance of eligible charges;

(6) any servicing agreement, administration agreement or other agreement for services;

(7) the subjecting of additional property or charges to the lien of the security document;

(8) any other matter which affects the security for the DSM financing bonds in any way;

(9) pledging any other security and monies, whether such security or monies are acquired by or on behalf of the authority to secure the payment of the DSM financing bonds.

(c) A security document may limit the rights of holders of DSM financing bonds of the authority to enforce obligations of the authority thereunder or under the financing document.

10 V.S.A. § 178. DSM Financing bonds

(a) From time to time the authority may issue financing bonds to pay costs of energy efficiency, conservation and combined heat and power programs and measures which have been approved by the public service board in a qualified DSM financing charge order, or to refund DSM financing bonds previously issued by the authority. DSM financing bonds issued by the authority shall be in accordance with all terms and conditions set forth in the applicable qualified DSM financing charge order.

(b) DSM financing bonds issued under this section shall bear the manual or facsimile signature of the manager or treasurer of the authority and the manual or facsimile signature of the chair or vice chair of the authority; provided, however, at least one of the foregoing signatures shall be manual unless the DSM financing bonds are to be manually authenticated by a bank or trust company serving as trustee for the DSM financing bonds. DSM financing bonds of the authority shall be sold by the signing officers at public or private sale, and the proceeds thereof shall be paid to the trustee under the security document which secures the DSM financing bonds.

(c) No financing or security document, bond or other instrument issued or entered into in the name and on behalf of the state under this subchapter shall in any way obligate the state of Vermont to raise any money by taxation or use other funds for any purpose to pay any debt or meet any financial obligation to any person at any time in relation to a project financed in whole or in part by the issue of the authority's DSM financing bonds under this subchapter, except from monies received or to be received under a financing or security document entered into under this subchapter or except as may be required by any other provision of law or from eligible charges to the extent eligible charges are property of the state of Vermont.

(d) DSM financing bonds of the authority authorized under this subchapter may, in accordance with a qualified DSM financing charge order, be issued:

(1) in one or more series of one or more denominations and bearing one or more rates of interest;

(2) in registered form or in bearer form with or without privileges of conversion and reconversion from one form to the other;

(3) payable in serial installments, as term bonds, or as asset-backed securities, and any series may consist of any or all types of bonds; and

(4) subject to redemption prior to maturity, with or without the payment of any redemption premium, in accordance with the provisions of the security document.

(e) The price at which DSM financing bonds of the authority are sold may be par or may be more or less than par, but the original purchaser of the DSM financing bond shall be obligated to pay accrued interest for the period, if any, from the date of the DSM financing bonds to the date of delivery.

(f) All DSM financing bonds issued under this subchapter and interest coupons applicable thereto, if any, shall be deemed to be negotiable instruments and to be investment securities under the Uniform Commercial Code (Title 9A).

(g) The authority shall act in the name of the state of Vermont and on its behalf as its instrumentality for the execution of financing documents, security documents, DSM financing bonds and other appropriate instruments, or for the taking of any action under this subchapter in accordance with a DSM financing order of the public service board.

(h) Title to or any other interest in any eligible charges which are financed in whole or in part by DSM financing bonds issued pursuant to this subchapter may be taken and held either in the name of the authority or in the name of the state of Vermont. In performing its functions under this section, the authority may exercise any and all powers conferred upon it by this subchapter.

(i) DSM financing bonds issued under the provisions of this subchapter shall not be deemed to constitute a general obligation debt or a general liability of the state. Each DSM financing bond issued pursuant to this subchapter shall contain on the face thereof a statement to the effect that the authority shall not be obligated to pay the same nor the interest thereon except from the revenues or assets pledged therefor, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on such DSM financing bonds.

10 V.S.A. § 179. Trustees and trust funds

A state or national chartered bank, Vermont bank or Vermont trust company may serve as trustee for the benefit of holders of DSM financing bonds of the authority under a security document, and the trustee may, at any time, own all or any part of the DSM financing bonds of the authority issued under that security document, unless otherwise provided therein. All monies received or held by the authority or by a trustee pursuant to a financing or security document, other than funds received or held by the authority for its own use, shall be deemed to be trust funds, and shall be held and applied solely in accordance with the applicable document, but the person paying the money to the authority or the trustee shall not, in any way, be bound to see to its proper application.

10 V.S.A. § 180. DSM financing bonds of the authority exempt from taxation

All DSM financing bonds issued under this subchapter and the income therefrom shall be exempt from taxation by the state of Vermont and all of its political subdivisions, agencies or instrumentalities, except that DSM financing bonds shall not be exempt from inheritance, transfer and estate taxes, or taxes in the nature thereof.

10 V.S.A. § 181. DSM financing bonds of the authority eligible for investment

DSM financing bonds issued under this subchapter shall be legal investments for all persons without limit as to the amount held, regardless of whether they are acting for their own account or in a fiduciary capacity; such DSM financing bonds shall likewise be legal investments for all public officials authorized to invest public funds. No person offering to buy or sell or buying or selling the mitigation bonds shall be required to obtain any license or register any transaction in connection with them.

10 V.S.A. § 182. Applications

Before issuing DSM financing bonds, the authority shall receive from the EEU or other appropriate person or entity an application in such form as the authority may, by regulation, prescribe. The EEU or such other authorized person may simultaneously submit an application to the authority for the issuance of DSM financing bonds pursuant to this subchapter and an application to the public service board for a qualified DSM financing charge order pursuant to section 209b of Title 30.